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20 GUARDSMARK, LLC

21 UNITED STATES DISTRICT COURT

22 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

23 AMR HAMDY, on behalf of himself
24 and all others similarly situated,

25 Plaintiff,

26 v.

27 GUARDSMARK, LLC, and DOES 1
28 through 10, inclusive,

Defendants.

CASE NO. CV 08-06807 R (PLAx)

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER
CONCERNING DISCOVERY AND
CONFIDENTIAL INFORMATION**

Judge: Honorable Manuel L. Real

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action will likely involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation would be warranted. Accordingly, the parties hereby
6 stipulate to and petition the Court to enter the following Stipulated Protective
7 Order. The parties acknowledge, as set forth in Section 10, below, that this
8 Stipulated Protective Order creates no entitlement to file confidential information
9 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
10 and reflects the standards that will be applied when a party seeks permission from
11 the court to file material under seal.¹

12 2. DEFINITIONS

13 2.1 Party: any party to this action, including all of its officers,
14 directors, employees, consultants, retained experts, and outside counsel (and their
15 support staff).

16 2.2 Disclosure or Discovery Material: all items or information,
17 regardless of the medium or manner generated, stored, or maintained (including,
18 among other things, testimony, transcripts, or tangible things) that are produced or
19 generated in disclosures or responses to discovery in this matter.

20 2.3 Confidential Information or Items: information (regardless of
21 how generated, stored or maintained) or tangible things that qualify for protection
22 under standards developed under F.R.Civ.P. 26(c).

23 2.4 Highly Confidential – Attorneys’ Eyes Only Information or
24 Items: extremely sensitive Confidential Information or Items whose disclosure to
25

26 ¹ The parties further acknowledge that at the time of the execution of this stipulation and
27 proposed order, Plaintiff is seeking to have the case remanded to state court. In the event that the
28 case is remanded to state court, the parties will meet and confer in an effort to reach agreement on
and submit to the pertinent state court a proposed protective order similar in substantive content
to this document.

1 another Party or nonparty would create a substantial risk of serious injury that could
2 not be avoided by means less restrictive than those set forth herein.

3 2.5 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 2.6 Producing Party: a Party or non-party that produces Disclosure
6 or Discovery Material in this action.

7 2.7 Designating Party: a Party or non-party that designates
8 information or items that it produces in disclosures or in responses to discovery as
9 “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

10 2.8 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY.”

13 2.9 Outside Counsel: attorneys who are not employees of a Party
14 but who are retained to represent or advise a Party in this action (as well as their
15 internal support staffs).

16 2.10 House Counsel: attorneys who are employees of a Party (as well
17 as their internal support staffs).

18 2.11 Counsel (without qualifier): Outside Counsel and House
19 Counsel (as well as their support staffs).

20 2.12 Expert: a person with specialized knowledge or experience in a
21 matter pertinent to the litigation who has been retained by a Party or its counsel to
22 serve as an expert witness or as a consultant in this action. This definition includes
23 a professional jury or trial consultant retained in connection with this litigation.

24 2.13 Professional Vendors: persons or entities that provide litigation
25 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
26 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
27 and their employees and subcontractors.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also any information copied or extracted
4 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
5 testimony, conversations, or presentations by parties or counsel to or in court or in
6 other settings that might reveal Protected Material.

7 4. DURATION

8 Even after the termination of this litigation, the confidentiality
9 obligations imposed by this Order shall remain in effect until a Designating Party
10 agrees otherwise in writing or a court order otherwise directs.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for
13 Protection. Each Party or non-party that designates information or items for
14 protection under this Order must take care to limit any such designation to specific
15 material that qualifies under the appropriate standards. Mass, indiscriminate, or
16 routinized designations are prohibited.

17 If it comes to a Party's or a non-party's attention that information or
18 items that it designated for protection do not qualify for protection at all, or do not
19 qualify for the level of protection initially asserted, that Party or non-party must
20 promptly notify all other parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise
22 provided in this Order (see, *e.g.*, second paragraph of section 5.2(a), below), or as
23 otherwise stipulated or ordered, material that qualifies for protection under this
24 Order must be clearly so designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from
27 transcripts of depositions or other pretrial or trial proceedings), that the Producing
28 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY" at the top, bottom or right margin of each page that
2 contains protected material or, alternatively, on the first page of a multi-page
3 document, if the entire document is protected. If only a portion or portions of the
4 material on a page qualifies for protection, the Producing Party should endeavor to
5 identify the protected portion(s) (*e.g.*, by making appropriate markings in the
6 margins) and specify, for each portion, the level of protection being asserted (either
7 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
8 ONLY").

9 A Party or non-party that makes original documents or materials
10 available for inspection need not designate them for protection until after the
11 inspecting Party has indicated which material it would like copied and produced.
12 During the inspection and before the designation, all of the material made available
13 for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS'
14 EYES ONLY." After the inspecting Party has identified the documents it wants
15 copied and produced, the Producing Party must determine which documents, or
16 portions thereof, qualify for protection under this Order, then, before producing the
17 specified documents, the Producing Party must affix the appropriate legend
18 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
19 ONLY") at the top, bottom or right margin of each page that contains Protected
20 Material. If only a portion or portions of the material on a page qualifies for
21 protection, the Producing Party also should endeavor to identify the protected
22 portion(s) (*e.g.*, by making appropriate markings in the margins) and specify, for
23 each portion, the level of protection being asserted (either "CONFIDENTIAL" or
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

25 (b) for testimony given in deposition or in other pretrial or
26 trial proceedings, that the Party or non-party offering or sponsoring, or giving the
27 testimony identify on the record, before the close of the deposition, hearing, or
28 other proceeding, all protected testimony, and further specify any portions of the

1 testimony that qualify as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 2 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each
 3 portion of testimony that is entitled to protection, and when it appears that
 4 substantial portions of the testimony may qualify for protection, the Party or non-
 5 party that sponsors, offers, or gives the testimony may invoke on the record (before
 6 the deposition or proceeding is concluded) a right to, during the time allocated for
 7 the witness to review and execute the deposition transcript, identify the specific
 8 portions of the testimony as to which protection is sought and to specify the level of
 9 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 10 ATTORNEYS’ EYES ONLY”) during this review period.

11 Transcript pages containing Protected Material must be separately
 12 bound by the court reporter, who must affix to the top of each such page the legend
 13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 14 ONLY,” as instructed by the Party or nonparty offering or sponsoring the witness
 15 or presenting the testimony.

16 (c) for information produced in some form other than
 17 documentary, and for any other tangible items, that the Producing Party affix in a
 18 prominent place on the exterior of the container or containers in which the
 19 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
 20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the
 21 information or item warrant protection, the Producing Party, to the extent
 22 practicable, should identify the protected portions, specifying whether they qualify
 23 as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

24 5.3 Inadvertent Failures to Designate. If timely corrected, an
 25 inadvertent failure to designate qualified information or items as
 26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 27 ONLY” does not, standing alone, waive the Designating Party’s right to secure
 28 protection under this Order for such material. If material is appropriately

1 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” after the material was initially produced, the
3 Receiving Party, on timely notification of the designation, must make reasonable
4 efforts to assure that the material is treated in accordance with the provisions of this
5 Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Unless a prompt challenge to a
8 Designating Party’s confidentiality designation is necessary to avoid foreseeable
9 substantial unfairness, unnecessary economic burdens, or a later significant
10 disruption or delay of the litigation, a Party does not waive its right to challenge a
11 confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
14 Designating Party’s confidentiality designation must do so in good faith and must
15 begin the process by conferring directly (in voice to voice dialogue; other forms of
16 communication are not sufficient) with counsel for the Designating Party. In
17 conferring, the challenging Party must explain the basis for its belief that the
18 confidentiality designation was not proper and must give the Designating Party an
19 opportunity to review the designated material, to reconsider the circumstances, and,
20 if no change in designation is offered, to explain the basis for the chosen
21 designation. A challenging Party may proceed to the next stage of the challenge
22 process only if it has first engaged in this meet and confer process.

23 6.3 Judicial Intervention. A Party that elects to press a challenge to
24 a confidentiality designation after considering the justification offered by the
25 Designating Party may file and serve a motion under Civil Local Rule 7 (and in
26 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged
27 material and sets forth in detail the basis for the challenge. Each such motion must
28 be accompanied by a competent declaration that affirms that the movant has

1 complied with the meet and confer requirements imposed in the preceding
2 paragraph and that sets forth with specificity the justification for the confidentiality
3 designation that was given by the Designating Party in the meet and confer
4 dialogue.

5 Until the court rules on the challenge, all parties shall continue to
6 afford the material in question the level of protection to which it is entitled under
7 the Producing Party's designation.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material
10 that is disclosed or produced by another Party or by a non-party in connection with
11 this case only for prosecuting, defending, or attempting to settle this litigation.
12 Such Protected Material may be disclosed only to the categories of persons and
13 under the conditions described in this Order. When the litigation has been
14 terminated, a Receiving Party must comply with the provisions of section 11, below
15 (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party
17 at a location and in a secure manner that ensures that access is limited to the
18 persons authorized under this Order.

19 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 CONFIDENTIAL only to:

23 (a) the Receiving Party's Outside Counsel of record in this
24 action, as well as employees of said Counsel to whom it is reasonably necessary to
25 disclose the information for this litigation;

26 (b) the officers, directors, and employees (including House
27 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
28 litigation;

1 (c) experts (as defined in this Order) of the Receiving Party
2 to whom disclosure is reasonably necessary for this litigation and who have signed
3 the “Agreement to Be Bound by Protective Order” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters, their staffs, and professional vendors to
6 whom disclosure is reasonably necessary for this litigation;

7 (f) during their depositions, witnesses in the action to whom
8 disclosure is reasonably necessary. Pages of transcribed deposition testimony or
9 exhibits to depositions that reveal Protected Material must be separately bound by
10 the court reporter and may not be disclosed to anyone except as permitted under
11 this Stipulated Protective Order;

12 (g) the author of the document or the original source of the
13 information; or

14 (h) any members of the putative class as pled in the then
15 operative complaint in the litigation (or if a class is eventually certified, then any
16 members of the certified class) to whom disclosure is reasonably necessary for this
17 litigation and who have signed the “Agreement to Be Bound by Protective Order”
18 (Exhibit A) (provided that Guardsmark does not concede that class certification is
19 appropriate, and instead contends that certification is not proper).

20 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’
21 EYES ONLY” Information or Items. Unless otherwise ordered by the court or
22 permitted in writing by the Designating Party, a Receiving Party may disclose any
23 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
24 EYES ONLY” only to:

25 (a) the Receiving Party’s Outside Counsel of record in this
26 action, as well as employees of said Counsel to whom it is reasonably necessary to
27 disclose the information for this litigation;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, and (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation; or

(e) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. (Written notification of counsel of record in the litigation shall be sufficient to constitute notice per this section.)

The Receiving Party also must immediately inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens

1 and the expenses of seeking protection in that court of its confidential material and
2 nothing in these provisions should be construed as authorizing or encouraging a
3 Receiving Party in this action to disobey a lawful directive from another court.

4 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Protected Material to any person or in any circumstance not authorized
7 under this Stipulated Protective Order, the Receiving Party must immediately (a)
8 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
9 best efforts to retrieve all copies of the Protected Material, (c) inform the person or
10 persons to whom unauthorized disclosures were made of all the terms of this Order,
11 and (d) request such person or persons to execute the “Acknowledgment and
12 Agreement to Be Bound” that is attached hereto as Exhibit A.

13 10. FILING PROTECTED MATERIAL. Without written permission
14 from the Designating Party or a court order secured after appropriate notice to all
15 interested persons, a Party may not file in the public record in this action any
16 Protected Material. A Party that seeks to file under seal any Protected Material
17 must comply with Civil Local Rule 79-5.

18 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing
19 by the Producing Party, within sixty days after the final termination of this action,
20 each Receiving Party must return all Protected Material to the Producing Party. As
21 used in this subdivision, “all Protected Material” includes all copies, abstracts,
22 compilations, summaries or any other form of reproducing or capturing any of the
23 Protected Material. With permission in writing from the Designating Party, the
24 Receiving Party may destroy some or all of the Protected Material instead of
25 returning it. Whether the Protected Material is returned or destroyed, the Receiving
26 Party must submit a written certification to the Producing Party (and, if not the
27 same person or entity, to the Designating Party) by the sixty day deadline that
28 identifies (by category, where appropriate) all the Protected Material that was

1 returned or destroyed and that affirms that the Receiving Party has not retained any
2 copies, abstracts, compilations, summaries or other forms of reproducing or
3 capturing any of the Protected Material. Notwithstanding this provision, Counsel
4 are entitled to retain an archival copy of all pleadings, motion papers, transcripts,
5 legal memoranda, correspondence or attorney work product, even if such materials
6 contain Protected Material. Any such archival copies that contain or constitute
7 Protected Material remain subject to this Protective Order as set forth in Section 4
8 (DURATION), above.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right
11 of any person to seek its modification by the Court in the future.

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2 12.2 Right to Assert Other Objections. By stipulating to the entry of
3 this Protective Order no Party waives any right it otherwise would have to object to
4 disclosing or producing any information or item on any ground not addressed in
5 this Stipulated Protective Order. Similarly, no Party waives any right to object on
6 any ground to use of any of the material covered by this Protective Order at trial, in
7 evidence or otherwise.

8 DATED: March 11, 2009

LAW OFFICES OF SHAUN SETAREH

9
10 By: /s/ Shaun Setareh

11 SHAUN SETAREH

12 Attorney for Plaintiff
13 AMR HAMDY

14 DATED: March 11, 2009

MUNGER, TOLLES & OLSON LLP
15 MARTIN D. BERN
MALCOLM A. HEINICKE

16
17 By: /s/ Malcolm A. Heinicke

18 MALCOLM A. HEINICKE

19 Attorneys for Defendant
GUARDSMARK, LLC

20
21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 Date: March 12, 2009

23
24 By: 

25 HONORABLE MANUEL L. REAL
26 UNITED STATES DISTRICT JUDGE
27
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of AMR HAMDY, on behalf of himself and all others
similarly situated, vs. GUARDSMARK, LLC, et al, Case No. C 08-06807 R
(PLAx). I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Central District of California for the purpose of enforcing the terms of
this Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full
name] of _____ [print or type full
address and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed Name; _____

Signature: _____